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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,766	11/07/2000	James F. Gausling	430672000101	4160

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EXAMINER

BREVARD, MAERENA W

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/708,766

Applicant(s)

GAUSLING ET AL.

Examiner

Maerena W. Brevard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the distal ends of the two shoulder support members connected to each other must be shown or the feature canceled from the claim. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 1, 8, and 15 fail to correspond in scope with that which applicants regard as the invention can be found in U.S. Patent No. 6,164,509 filed July 19, 1999. In that application, applicants have stated that *at least one side support member disposed adjacent one of the lateral sides and having a proximate end connected to the backpack body at a second juncture between the outer side and one of the lateral sides and a distal end connected to one of the shoulder support members*, which was a reason for allowance over the prior art. This statement indicates that the invention is different from what is defined in the claims because there is no support for the breadth of the claims as presented in the original application.

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4. Claims 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the distal ends of the two shoulder support members connected to each other.

The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim, since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 3, 4, 5, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Sizemore.

Sizemore discloses an ergonomic backpack comprising:

- A backpack body (1);
- A plurality of shoulder support members (2), each having a proximal end connected to the body at a first transition region (Figure 3);
- The body comprises a single, seamless, continuous member to the degree applicant claims;

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- The backpack is comprised of nylon with a fineness between 500 denier and 1050 denier (Column 5, lines 27-28); and
- A plurality of straps (Figures 1-3).

7. Claims 1, 7-9, 11-13, 15, 16, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Clements.

Clements discloses an ergonomic backpack comprising:

- A backpack body (1);
- A plurality of shoulder support members (11), each having a proximal end connected to the body at a first transition region (Figure 4);
- An adjustable hip belt (12) attached to the backpack body, wherein the hip belt is comprised of two pieces, each respectively attached to a lateral side (Figures 4 and 5);
- The body comprises a single, seamless, continuous member to the degree applicant claims;
- The backpack is comprised of nylon;
- A plurality of straps (Figure 1);
- The hip belt is attached to the backpack body at one or more of the straps (Figure 1); and
- The distal end of each shoulder support member is connected to the backpack body at a second transition region between the outer region of the backpack and a lateral side region of the backpack (Figure 6), to the same degree applicant claims.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clements in view of Lemire et al.

Clements discloses all of the limitations of claims 6, 14, and 17 except the backpack body comprising a yoke disposed along the top region and connected to each shoulder support member. However, Lemire teaches a backpack having a yoke (9) disposed along the top region and connected to each shoulder support member. It would have been obvious to attach the yoke of Lemire to the backpack of Clements. Doing so would provide an alternate means of attaching the shoulder support members to the backpack and allow more comfort for the wearer.

Double Patenting

3. Claims 2, 10, and 18-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 16, and 19 of U.S. Patent No. 6,164,509. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim the same subject matter that made the claims allowable over the prior art.

Response to Arguments

7. Applicant's arguments filed 3/29/02 have been fully considered but they are not persuasive. In response the applicant's argument concerning the 112 rejection, the rejection still

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stands because the present application is a continuation of U.S Patent No. 6,164,509 and the breadth of the claims are relevant. The recited reasons for allowance are relevant since that is the basis of the patent being readable and allowable over the prior art. Therefore, absent the language cited, the claims do not have priority of the previously cited patent.

Regarding the art rejection of the present claims, the art reads on the claim language to the same degree applicant claims.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703/872-9302 for regular communications and 703/746-4224 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-0037.

lwb
Maerena Brevard
June 19, 2002



Stephen K. Cronin
Primary Examiner